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May 24, 2005

VIA FACSIMILE & U.S. MAIL

Sharon K. Shutler, Esquire
Department of Commerce
National Oceanic & Atmospheric Administration
Office of General Counsel -- Natural Resources
1315 East West Highway
Silver Spring, MD 20910

Re: Athos I Oil Spill – Delaware River
Invitation to Participate in Natural Resource Damage Assessment

Dear Sharon:

Thank you for your recent letter, dated March 9, 2005, but which was first sent to Gene O'Connor and me by facsimile on May 9, 2005, in which the Natural Resource Damage Trustees invite the Athos I Responsible Party (the "RP"), whom we represent, to participate in a natural resource damage assessment ("NRDA").

On behalf of the RP, and subject to the terms and limitations below, which I hope the Trustees will find acceptable, we accept the invitation to continue the RP's participate in the cooperative NRDA and join the Joint Assessment Team ("JAT") established to cooperatively manage and direct the NRDA.

It should come as no surprise given our recent communications on this subject, including the discussions at the joint RP/Trustee meeting held in April in Philadelphia, that the RP believes this is a case in which it is entitled to limitation of liability pursuant to Section 1004(a)(1)(A) of the Oil Pollution Act ("OPA"), 33 U.S.C. § 2704(a)(1)(A), and 15 C.F.R. Part 990, or other applicable law, and possibly exoneration pursuant to Section 1003(a)(3) of OPA, 33 U.S.C. §

Sharon K. Shutler, Esquire

May 24, 2005

Page 2

2703(a)(3), as it now appears this incident was solely caused by the act or omission of an unknown third-party. Relevant to the issue of limitation under OPA, as of March 21, 2005, the RP had committed in excess of \$100 million to response and NRDA pre-assessment activities, an amount well in excess of its OPA-established liability limit of \$46, million. The RP's financial commitment to this endeavor to date should leave no doubt as to its willingness to extend all reasonable cooperation to federal and state response authorities, as well as the NRD Trustees. We know you appreciate these efforts.

Consistent with its position on limitation and the preliminary results of the incident investigation conducted by the U.S. Coast Guard, on March 21, 2005, the Federal On-Scene Coordinator assumed from the RP direct management and financing of response activities. The RP has continued to cooperate with the FOSC, particularly in the transition of response activities, but response activity funding is now handled by the FOSC and the various State response authorities through the Fund.

The above stated, the RP recognizes the importance of the NRDA process and the seriousness with which it is pursued by the Trustees. It also believes it can be of technical and administrative assistance to the Trustees in the pursuit of this endeavor. However, in light of the RP's position on limitation, we would like to propose a modified funding arrangement, as follows:

1. RP Participation. The RP, through its counsel and with the assistance of Polaris Applied Sciences, Inc. (Gary Mauseth and Greg Challenger), ENTRIX, Inc. (Ted Tomasi), and possibly other consultants, will participate in the cooperative NRDA if it may have a representative, and a vote, on the JAT. We also request that the RP be permitted to participate in a meaningful way on each Technical Work Group ("TWG") established by the JAT. [This process already is in place and we have provided Jim Hoff with RP contacts for each of the established TWGs.] The cost and expense of RP participation through RP counsel or consultants will be borne by the RP, without waiver of, but expressly reserving its right to seek reimbursement therefore through the Fund and/or as otherwise permitted by law.
2. Trustee Past and Future Costs. The RP respectfully declines to fund past or future Trustee costs associated with the NRDA and NRDA pre-assessment activities, including the costs of Trustee-retained contractors, beyond the commitment it made towards those activities in the pre-assessment letter-agreement entered in January of this year. For the reasons we discussed with the Trustees and the Fund at our meeting in April, RP advancement of Trustee costs would seem to be the least efficient way to manage or administer the funding of past and future NRDA costs, particularly in view of the fact that there are mechanisms through the Fund for direct reimbursement of

Sharon K. Shutler, Esquire
May 24, 2005
Page 3

Trustee costs. Under the rather unique facts here, we hope you appreciate our position in this regard.

3. Cooperative Studies – RP Funding and Contracting. The RP will pay the cost of in-scope Cooperative Studies performed by its consultants or third party contractors specifically retained by it (with JAT approval) for such studies, and will act as the contracting entity for the retention of third party contractors (including laboratories) approved by the JAT. The RP's commitment to do so would, again, be without waiver of, but expressly reserving its right to seek reimbursement through the Fund and/or as otherwise permitted by law for any such costs. Cooperative Studies are those studies approved by consensus of the RP and Trustees, acting through the JAT, with a JAT-approved objective, scope of work and budget. Because the RP has the ability to contract directly with third party contractors without the strictures sometimes associated with government contracting, we believe this is a tangible contribution to the NRDA process and may expedite the pursuit and completion of Cooperative Studies. Naturally, we also would expect Trustee cooperation in supporting any Fund reimbursement claim made by the RP for funding it does provide through this process. Although recognizing that the RP has far less influence over the Fund's processing of claims than do the Trustees themselves, we are willing to correspondingly cooperate and support Trustee reimbursement requests to the Fund for Cooperative Studies when undertaken or performed by the Trustees or their embedded contractors.
4. RP Comments to Become Part of the Administrative Record. As we discussed with the Trustees, we require that the RP be given a reasonable opportunity to review and comment within the Administrative Record on all Cooperative and Non-Cooperative Studies (Non-Cooperative Studies being those studies undertaken by the Trustees without RP concurrence, or Cooperative Studies whose scope or budget is expanded without RP concurrence) and all other legal or technical submissions to the Administrative Record.
5. Joint Use of Experts. We are willing to permit the Trustees to use the RP's experts performing or participating in Cooperative Studies, provided the RP similarly may use and rely upon Trustee experts in connection with their work on studies, reports or other submissions made a part of the Administrative Record. The costs to use such experts in a consulting or testifying role shall be borne by the party retaining them for that purpose.
6. Reservation. The RP's commitment to provide funding for certain costs associated with the NRDA process is expressly made without prejudice to, and without waiver

Sharon K. Shutler, Esquire

May 24, 2005

Page 4

or limitation of, its right to seek limitation of liability and/or exoneration pursuant to Sections 1003 and 1004 of OPA, 33 U.S.C. §§ 2703 and 2704, or other applicable law, or to seek to recover some or all of such costs from any person or entity, including the Oil Spill Liability Trust Fund, all such rights and causes of action being expressly reserved

Once again, we thank you for your offer and will await word from you on the acceptability of this counter-offer. Please do not hesitate to contact either Gene O'Connor or me should you have any questions.

Very truly yours,



Timothy J. Bergère

cc: Eugene J. O'Connor, Esquire